

RECORDING REQUESTED BY:

Westway Development
Attention: Mark Webber
5115 Douglas Fir Road, Suite L
Calabasas, California 91302

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Attention: Sayareh Amir, Chief
Southern California Cleanup Operations
1011 North Grandview Avenue
Glendale, California 90201

COPY of Document **02-0210913**

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Has not been compared with original.
Original will be returned when
processing has been completed.
LOS ANGELES COUNTY REGISTRAR - RECORDER

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION

(Re: Westway Development Site, 10100 Jefferson Boulevard, Culver City, California, Assessor's Parcel Numbers 4296-001-001, 4296-001-004, 4296-001-010)

This Covenant and Agreement ("Covenant") is made by and between Westway Development (the "Covenantor"), the current owner of property situated in Culver City, County of Los Angeles, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of contaminants as defined in Health and Safety Code section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant:

ARTICLE I

STATEMENT OF FACTS

1.01 The Property is described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. This property is more specifically described as County Assessor's Parcel No.(s): 4296-001-001, 4296-001-004, and 4296-001-010. The Property consists of approximately 12 acres of land, which included the following at the time this Covenant was prepared: 4 active oil wells, two (2) above-ground storage tanks (ASTs), and a former laboratory. The Property is located in the County of Los Angeles, within the State of

California in the area now generally bounded by Jefferson Boulevard, a parking lot, and commercial properties to the west; an active oil field to the east; single-family residences to the south; and vacant property to the north.

1.02 Westway Development commissioned Arcadis, Geraghty, & Miller, Inc. to conduct a Preliminary Endangerment Assessment (PEA) to evaluate the site for potential health risks. The PEA Report, dated April 25, 2001, was approved by the Department, and is incorporated herein by reference. The Report is available for inspection at the Department in the Glendale Office. Based on the Human Health Screening Evaluation included in the PEA, the Department concluded that the use of the property as a residence, hospital, school for persons under the age of 21 or a day care facility would constitute an unacceptable health risk. However, the property will not present an unacceptable threat to human health or the environment, if limited to commercial and/or industrial use by a deed restriction.

1.03 As detailed in the PEA approved by the Department on April 10, 2001, all or a portion of the surface and subsurface soils within 10 feet of the surface of the Property include contaminants, as defined in Health and Safety Code section 25316. Specifically, several volatile organic compounds (VOCs) such as methylene chloride (3.4 parts per billion by volume (ppbv)) and benzene (74 µg/L) were detected in the soil-gas samples. Methane was detected at 122,000 parts per million by volume (ppmv) and hydrogen sulfide (H₂S) was detected at 3 ppmv. Due to the elevated levels of methane and H₂S, the Department requires the installation of a methane abatement system in all buildings constructed on the Property. VOCs were detected in the following maximum concentrations in soil: benzene (57 µg/kg), n-butyl benzene (280 µg/kg), p-isopropyl toluene (190 µg/kg), 1,2,4-trimethylbenzene (1400 µg/kg), 1,3,5-trimethylbenzene (340 µg/kg), and p- and m-xylenes (180 µg/kg). Semi-volatile organic compounds (SVOCs) were detected at the following maximum concentrations: naphthalene (39mg/kg), 2-methyl-naphthalene (76mg/kg), 1-methyl-naphthalene (57 mg/kg) and benzo(a)pyrene (50 mg/kg).

ARTICLE II

DEFINITIONS

2.01 Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03 Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant in Article IV sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Health and Safety Code section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding upon Owners/Occupants. Pursuant to Health and Safety Code section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assigns, and the agents, employees, and lessees of the owners, heirs, successors, and assigns. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03 Written Notice. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice as required by Health and Safety Code section 25359.7.

3.04 Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05 Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV

RESTRICTIONS

4.01 Requirements. All buildings constructed on the property shall have a methane abatement system installed at the time of construction. The system shall be maintained in good repair at all times

4.02 Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing constructed or installed for use as residential human habitation.

- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.03 Soil Management.

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without complying with all local, state, and federal laws and regulations and notifying the Department; provided that the Department shall not, by reason of this Section 4.03, have authority to approve, disapprove or otherwise affect the proposed activities disturbing the soil unless such activities otherwise violate the Restrictions.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

4.04 Prohibited Activities. The following activities shall not be conducted on the Property:

- (a) Raising of food, e.g. livestock, food crops, etc.;
- (b) Drilling for drinking water without prior written approval by the Department.

4.05 Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

ARTICLE V

ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to them shall be grounds for the Department to require the Covenantor or Owner to modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in violation of ARTICLE IV, RESTRICTIONS, sections 4.02 and 4.04. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

5.02 Reservation of Rights. Nothing in this covenant shall be construed to limit the right of the Department to enforce state or federal laws and regulations which in the Department's opinion are necessary to protect human health and the environment.

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.01 Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Los Angeles within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Westway Development,
Mark Webber, Managing Member
5115 Douglas Fir Road, Suite L
Calabasas, California 91302

To Department:

Sayareh Amir
Southern California Cleanup Operations, Glendale Office
Department of Toxics Substances Control
1011 North Grandview Avenue
Glendale, California 91201

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

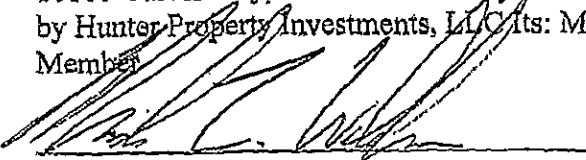
7.05 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

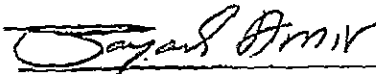
Covenantor:

10100 Culver City, LLC dba Westway Development
by Hunter Property Investments, LLC Its: Managing
Member


by: Mark L. Webber
Its: Managing Member

Department:

Department of Toxic Substances Control

By: 
Title: Sayareh Amir, Chief
Southern California Cleanup Operations

Date: 01/14/02

STATE OF CALIFORNIA)

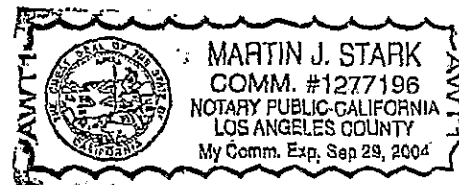
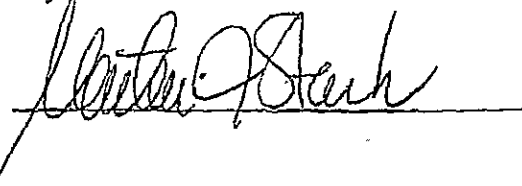
COUNTY OF LOS ANGELES)

On this 9th day of JANUARY, in the year 2002,before me MARTIN J. STARK, personally appearedMARK L. WEBBER

~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On this 14 day of Jan, in the year 2002,before me Caterina Solomon, personally appearedSayar-e-h Amir

~~personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.~~

WITNESS my hand and official seal.

Signature

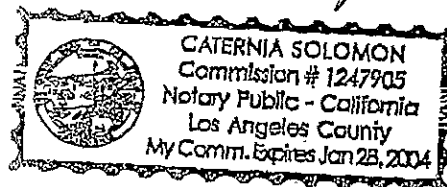


EXHIBIT "A"

PARCEL 1:

LOTS 3 AND 5 OF TRACT NO. 3343, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 36 PAGES 90 AND 91 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THAT PORTION OF SAID LAND DESCRIBED IN THE DEED FROM ESTEFANA MACHADO VALENZUELA, FORMERLY ESTEFANA MACHADO TO P. G. HARRIS CO., A CALIFORNIA CORPORATION, RECORDED MAY 11, 1960 AS INSTRUMENT NO. 1480, OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM THAT PORTION CONVEYED TO THE CITY OF CULVER CITY, A MUNICIPAL CORPORATION, BY DEED RECORDED MARCH 6, 1972 AS INSTRUMENT NO. 3032, OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM THAT PORTION OF LOT 5 CONDEMNED BY THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, AND DESCRIBED AS PARCEL NO. 232 IN THAT CERTAIN JUDGMENT AND FINAL ORDER OF CONDEMNATION, CASE NO. C 727600, SUPERIOR COURT, RECORDED JUNE 12, 1998 AS INSTRUMENT NO. 98-999846, OFFICIAL RECORDS.

PARCEL 2:

LOT 7 OF TRACT NO. 3343, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 36 PAGES 90 AND 91 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE WESTERLY 220 FEET THEREOF.